

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11502 of 2007

With

SPECIAL CIVIL APPLICATION No. 12215 of 2007

To

SPECIAL CIVIL APPLICATION No. 12222 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair
copy of the judgment ? NO

4 Whether this case involves a substantial
question of law as to the interpretation of
the constitution of India, 1950 or any order
made thereunder ? NO

5 Whether it is to be circulated to the civil
judge ? NO

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KAMINIBEN P KINARIVALA & 8 - Petitioner(s)

Versus

**GUJARAT INDUSTRIAL INVESTMENT CORPORATION LTD. & 2 -
Respondent(s)**

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Appearance :

MR P A MEHD for Petitioner(s) : 1, DELETED for Petitioner(s) : 2 - 9.

MS MEGHA JANI for Respondent(s) : 1,

MR NANDISH CHUDGAR, for NANAVATI ASSOCIATES for Respondent(s) :
2,

MR APURVA DAVE, AGP. in SCA Nos. 11502 of 2007 & 12215 of 2007 to
12219 of 2007.

MR SUNIT SHAH , GOVERNMENT PLEADER in SCA Nos. 12220 of 2007 to
12222 of 2007 for Respondent(s) : 3.

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**CORAM : HONOURABLE MR.JUSTICE
D.A.MEHTA**

Date : 03/10/2007

ORAL JUDGMENT

1 Rule. The petitions are taken up for final hearing and disposal today considering the view that the Court is inclined to take. Learned Advocates appearing for the respective parties in each of the petitions are directed to waive service of Rule.

2 This group of petitions have been filed by various petitioners challenging order dated 04.04.2007 made by the Arbitral Tribunal in Lavad Suit No. 1 of 2006 and Lavad Suit No. 2 of 2006 filed by respondent No.2 Bank against one M/s. Kinariwala Spinners Ltd.

3 The facts which are not in dispute are that on 19.12.1996 the petitioners pledged shares of various limited companies as security for the financial facility to the tune of Rs. 6,54,00,000/- (Rupees Six crores Fiftyfour lacs only) availed of by M/s. Kinarivala Spinners Ltd. (the Company) from respondent No.1-GIIC and respondent No.2 - Kalupur Bank to the tune of Rs. 4,54,00,000/- (Rupees Four crores Fiftyfour lacs only) and Rs.2,00,00,000/- (Rupees Two crores only) respectively. The agreement categorically records that the petitioners, described as share holders of the respective companies, shall pledge the shares as per Annexure-A to the agreement in favour of GIIC and Kalupur Bank as a security to

secure the loans advanced/to be advanced by GIIC and Bank to the said borrower Company. The agreement further goes on to record that the share holders have agreed that in the event of the Company failing to repay the said loans and/or any other dues of GIIC and the Bank within the stipulated time and/or Committing any breach of the loan agreement executed by the Company in favour of GIIC and the Bank, GIIC and the Bank shall have discretion to sell or cause to be sold or transfer any one or more of the said shares for the purpose of recovery of the outstanding dues.

4 It is further an accepted position that the dues of GIIC stand settled and GIIC has no outstanding dues to be recovered from the Company.

5 Kalupur Bank has preferred two Lavad Suits before the Arbitral Tribunal under the Multistate Cooperative Societies Act, 2002. During pendency of those proceedings the petitioners herein preferred application dated 9.2.2007 for being impleaded as necessary and proper parties in the pending suits, with a further prayer to modify the order of attachment dated 5.2.2007 made by the Arbitral Tribunal and lift the order of attachment. After hearing the parties the Arbitral Tribunal has vide order dated 4.4.2007 rejected the application for impleadment.

6 Mr.P.A.Mehd, learned Advocate appearing on behalf of the

petitioners has submitted that the petitioners are interested in the outcome of the arbitral proceedings as the shares which are attached are of the ownership of the petitioners. That, in fact on sale of certain properties an amount in excess of outstanding dues has been realised and therefore the arbitration suits are required to be dismissed releasing the securities pledged by the petitioners in the capacity as guarantors to the transaction of loan availed of by the Company.

7 Mr. Nandish Chudgar, learned Advocate appearing on behalf of respondent No.2 Bank has submitted that no error is committed by the Arbitral Tribunal in rejecting the application moved by the petitioners. That if the agreement between the parties is considered the right of Bank to effect recovery from the securities is almost automatic once the arbitration proceedings stand concluded in favour of the Bank. That the petitioners cannot be heard to plead otherwise and hence the petitioners have rightly been held to be neither necessary nor proper parties for decision in arbitral proceedings.

8 On going through the agreement between the parties it is apparent that the petitioners herein have pledged their personal and individual properties in the form of shares of limited companies as security /guarantee for the loan advanced to the company by GIIC and the Bank. The agreement also records that in the event the Company defaults in repaying loan within the stipulated time or

commits breach of the agreement between the parties the right which is already vested in GIIC and the Bank comes alive entitling the Bank and/or GIIC to effect recovery by putting to sale the securities pledged by the petitioners. Therefore, the petitioners are directly interested in the outcome of the arbitral proceedings. In the event the Bank fails in establishing its claim against the Company and the Arbitral Tribunal comes to the conclusion that nothing is recoverable from the Bank, possibly the petitioners would not be required to plead any case. However, in the other scenario, viz. where the Bank succeeds in the arbitral proceedings, for any reason whatsoever, and the Company i.e. principal borrower fails to discharge the liability the guarantors would render themselves liable by virtue of the tripartite agreement between the parties and the Bank can seek realization of the securities to effect the recovery of the outstanding dues. The position in law is well settled. The liability of a guarantor is co-extensive with that of the borrower and that liability is joint and several.

9 In the aforesaid set of facts and circumstances of the case the Arbitral Tribunal committed an apparent error in law in rejecting the application moved by the petitioners to be impleaded as necessary and proper parties. Impugned order dated 04.04.2007 is therefore quashed and set aside. The Arbitral Tribunal is directed to permit the petitioners to be impleaded as necessary and proper parties in the pending arbitration proceedings being Lavad

Suit Nos. 1 of 2006 and 2 of 2006.

10 However, it is made clear that the petitioners had while moving the application for impleadment also sought modification of the order of attachment, but the Arbitral Tribunal having rejected the prayer for impleadment has not recorded any finding qua the prayer for modification of order of attachment and therefore to the said extent the application moved by the petitioners shall stand revived and it will be open to the Arbitral Tribunal to record appropriate finding in this regard, if deemed fit, in accordance with law.

11 The petitions are allowed accordingly to the aforesaid extent. Rule made absolute. There shall be no order as to costs. Registry to place copy of this judgment in all connected matters.

Sd/-
(D.A. Mehta, J.)

m.m.bhatt